IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CGB OCCUPATIONAL THERAPY, INC., Plaintiff	:	CIVIL ACTION
v.	:	
RHA/PENNSYLVANIA NURSING HOMES, INC., et al., Defendants	:	No. 00-4918

Newcomer, S.J. December , 2001

M E M O R A N D U M

Presently before the Court is Plaintiff CGB Occupational Therapy, Inc.'s Motion for Reconsideration and Defendant Sunrise Assisted Living Inc.'s Response thereto. For the reasons set forth below, this Court will grant plaintiff's Motion for Reconsideration.

BACKGROUND

Plaintiff CGB Occupational Therapy, Inc., d/b/a CGB Rehab, Inc.,("CGB") a Pennsylvania corporation, is a provider of rehabilitation services for long term care and assisted living facilities. Initially, the defendants in this action consisted of the following parties: (1) Sunrise Assisted Living, Inc. ("Sunrise"), which manages skilled nursing and assisted living facilities; (2) Symphony Health Services, Inc. ("Symphony"), which provides physical, occupational and speech therapy rehabilitation services in skilled nursing facilities; (3) RHA/Pennsylvania Nursing Homes, Inc., d/b/a Prospect Park

Rehabilitation Center, Prospect Park Rehabilitation Center, Prospect Park Health and Rehabilitation Residence, ("Prospect"), which operates as a skilled nursing facility in Prospect Park, Pennsylvania; (3) RHA/Pennsylvania Nursing Homes, Inc., d/b/a Pembrooke Nursing and Rehabilitation Center and Pembrooke Nursing Rehabilitation Residence, and f/k/a West Chester Arms Nursing and Rehabilitation Center, ("Pembrooke"), which operates as a skilled nursing facility in Prospect Park, Pennsylvania; and, (4) RHA Health Services Inc., ("RHA"), which provides management services to skilled nursing and assisted living facilities.

Since the commencement of this action, plaintiff has settled its claims against the RHA Defendants. In addition, Defendant Symphony filed for bankruptcy, causing plaintiff's claims against Defendant Symphony to be stayed under the automatic stay provisions of the Bankruptcy Code. Therefore, this Court chooses to outline only those facts relevant to plaintiff's claims against Defendant Sunrise, as they are the facts pertinent to motion currently before the Court.

The relevant events of the Complaint date back to January 1, 1995. It was at that time Plaintiff CGB and Defendant Pembrooke, then known as West Chester Arms Nursing and Rehabilitation Center, entered into an agreement wherein CGB agreed to provide physical, occupational, and speech therapy services for Pembrooke ("Pembrooke Agreement"). On October 7,

1996, Plaintiff CGB and Defendant Prospect entered into a similar agreement ("Prospect Agreement"). Within both the Pembrooke and Prospect Agreements was a provision indicating that in the event either of the respective Agreements was terminated, Pembrooke and Prospect would not, for a period of twelve months, employ or contract with any physical, occupational, or speech therapist who was then working for or had been employed, within the past twelve months, by Plaintiff CGB to perform physical, occupational, or speech therapy.

On June 30, 1998, Defendants Prospect and Pembrooke sent termination notices to CGB, giving 90 days notice to be effective September 30, 1998. Plaintiff alleges that on July 31, 1998, Marjorie Tomes, Administrator of Prospect and employee of Sunrise, called all CGB therapists, assistants, and aides into her office and told them that as of September 30, 1998, CGB would no longer provide services at Prospect Park and Pembrooke. She further stated that Symphony would take over as of October 1, 1998. Plaintiff also alleges that at this same meeting, Ms. Tomes asked the CGB therapists, assistants, and aides whether any of them wished to work for Symphony. Ms. Tomes allegedly took down the names of those who did. Plaintiff also avers that Symphony contacted the therapists, assistants and aides at both the Pembrooke and Prospect Park facilities, urging them to remain at their respective facilities and work for Symphony.

On August 3, 1998, plaintiff's attorney sent a letter to Ms. Tomes, advising her that "My information is that you personally approached CGB's therapists and engaged in a dialog with them, or groups of them, in which you appear to have interfered tortiously with the contractual relationship between CGB and those therapists. . . . Were this matter to go into litigation as, for example, a suit against you personally and Sunrise, your employer, for tortious interference with contract, one of the areas CGB would investigate in its discovery is whether Sunrise, or even you personally, stood to benefit financially from that tortious interference with contract." Ms. Tomes then allegedly reported this letter to Defendants RHA, Sunrise, and Symphony. On September 16, 1998, plaintiff's attorney sent a letter to Symphony addressing, inter alia, Tomes' solicitation of plaintiff's employees.

As of September 30, 1998, plaintiff's staff was not permitted to continue working at either the Pembrooke or the Prospect facilities. Thereafter, Defendant Symphony hired, according to plaintiff, at least three CGB therapists and one aide, for which plaintiff was paid no fee.

On September 28, 2001, plaintiff brought this action alleging the following four counts: 1) breach of contract against Defendants Prospect and Pembrooke; 2) monies due for rental equipment against Pembrooke; 3) tortious interference against

Defendants Sunrise, Symphony, and RHA; and 4) conversion of Medicare monies due plaintiff against RHA, Pembrooke, and Prospect. On February 2, 2001, Defendant Sunrise filed an Answer to plaintiff's Complaint, and on February 16, 2001 Defendant Sunrise amended its answer. On April 21, 2001, Defendant Sunrise filed a motion for leave to file a Second Amended Answer. This motion was granted as uncontested, and Defendant Sunrise filed its Second Amended Answer on May 18, 2001. Pursuant to a Motion to Dismiss on behalf of Defendant Sunrise, this Court ruled that the plaintiff violated the statute of limitations for a tortious interference with a contract claim and subsequently dismissed the plaintiff's case on August 10, 2001. Presently before the Court is plaintiff's Motion for Reconsideration of its previous ruling.

DISCUSSION

I. LEGAL STANDARD FOR RECONSIDERATION

Local Rule of Civil Procedure 7.1 permits a party to move for reconsideration within ten days of the entry of an order. CBG properly filed its Motion for Reconsideration within the permissible ten day period. The purpose of a motion for reconsideration is to present newly discovered evidence or correct manifest errors of law. Harsco Corp. v. Zlotnicki, 779 F.2d 906, 909 (3d Cir. 1985). The case at hand is an example of the latter. This Court was mistaken in ruling that CGB was

barred by the statute of limitations from bringing a claim for tortious interference with a contract against Sunrise. A clarification of the applicable case law shows that CGB filed their action against Sunrise within the applicable statute of limitations. Therefore, in order to prevent a manifest injustice of law, this Court must reverse its previous ruling and allow CGB's suit to proceed.

II. PENNSYLVANIA'S STATUTE OF LIMITATIONS

The statute of limitations for a claim of tortious interference with a contract is clearly set forth under 42 Pa.C.S.A. § 5524(3) at two years. Bender v. McIlhatten, 360 Pa.Super. 168, 173 (1987). This leaves the Court with one crucial question which must be answered in order to properly rule on this matter: at what point does the statute start to run on a claim for tortious interference with a contract?

In answering this question previously, this Court erroneously relied upon two federal cases, Elliott, Reigner, Siedzikowski & Egan, P.C. v. The Pennsylvania Employees Benefit Trust Fund, 161 F.Supp.2d 413 (E.D.Pa. 2001), and Windward Agency, Inc. v. Cologne Life Reinsurance Co., No. 95-CV-7830, 1996 WL 392539 (E.D.Pa. July 11, 1996). These cases should not have been applied here for two reasons. First, they incorrectly state the Pennsylvania law governing when the statute of

limitations begins to run in a tortious interference case. Second, both cases address significantly different facts than the case before the Court and are therefore inapplicable.

A. Elliot and Windward Incorrectly State Pennsylvania Law

Both Elliot and Windward misrepresent Pennsylvania law concerning the requirements for triggering the statute of limitations in a tortious interference claim. The Windward Court indicates, "[a] cause of action for tortious interference with a contract accrues (and thus, the statute of limitations begins to run) when one party first learns of another party's interfering acts." Windward 1996 WL at *2. Five years later, the Elliot Court followed the Windward decision by holding, "[a] cause of action for tortious interference with [a] contract accrues when the plaintiff first realizes that the defendant is interfering with his contract." Elliot 161 F.Supp.2d at 424.

The Elliot and Windward Courts have stretched the Pennsylvania law in this area to say something that was never intended. No Pennsylvania State Court has ever expressly held that notification alone is capable of triggering the statute of limitations. In fact, to the contrary, Pennsylvania Courts have carefully avoided such a holding. A review of the relevant case law shows that Pennsylvania Courts have interpreted the statute of limitations in tortious interference claims to begin to run ".

. . as soon as the right to institute and maintain a suit arises. . . ." Pocono Int'l Raceway, Inc. v. Pocono Produce, Inc., 503 Pa. 80, 84 (1983); See, e.g., Eagan v. U.S. Expansion Bolt Company, 322 Pa.Super. 396, 398 (1983)(A statute of limitations only begins to run once the cause of action aries). A cause of action for tortious interference of contract does not arise unless the following four elements are met: (1) the existence of a contractual, or prospective contractual relation; (2) purposeful action on the part of the defendant, specifically intended to harm the existing relation; (3) the absence of privilege or justification on the part of the defendant; and (4) the occasioning of actual legal damage as a result of the defendant's conduct. Pawlowski v. Smorto, 403 Pa.Super. 71, 78 (1991); see, e.g., A.D.E. Food Services Corp. v. City of Philadelphia, No. 95-CV-7485, 1997 WL 631121, *11 (E.D.Pa. October 9, 1997). Therefore, before the statute of limitations in a tortious interference with a contract claim can begin to run, damages must be sustained by the plaintiff as a result of the defendant's conduct. Pawlowski 403 Pa.Super. at 79.

Both the Elliot and Windward Courts relied on Eagan, to stand for the proposition that notice of an interfering act, in itself, triggers the statute of limitations. Elliot, 161 F.Supp.2d at 423.; Windward, 1996 WL at *2. Eagan, however, never expressly conveys such law. The Eagan Court did affirm a

lower court's finding that the statute began to run on the date Mr. Egan was notified of the interfering acts. Curiously, the opinion offers no discussion as to when the four elements of a tortious interference claim were met. Such an omission, however, should not be interpreted to mean that notification alone triggered the statue. For if the Egan Court intended to point to notification as a triggering event, the Court never expressly indicates such an intent. To the contrary, as indicated previously, the Egan Court wrote, "[i]t is well settled that a statute of limitations begins to run when the cause of action accrues." Eagan 322 Pa.Super. at 398; citing Myers v. USAA Casualty Insurance Company, 298 Pa.Super. 366, 373 (1982). Additionally, had such an intent been present, the Egan Court would have had to actively rewrite the Pennsylvania law on this subject, not to mention rule directly against the Pennsylvania Supreme Court's decision in Pocono which was decided less than two weeks prior to the superior court's decision in Egan.

If this Court were to follow the law as represented by Elliot and Windward, gross injustice would occur not only in this case, but perhaps in future cases as well. A notice triggered statute, as suggested by the Elliot and Windward Courts, would provide different plaintiffs with unequal amounts of time to file an identical claim. Consider a plaintiff who receives notice of tortious interference and simultaneously is able to allege each

of the four elements required in order to file a tortious interference claim. This plaintiff has two years from the date of notice to file the claim. On the other hand, consider a plaintiff who receives notice and is only able to allege three of the four elements[1]. Until all four elements can be alleged such a plaintiff is unable to file suit. In the meantime, the statute of limitations would have been triggered upon notice. Therefore, if more than two years elapses between the time of notice and the ability to allege all four elements, the plaintiff will be barred indefinitely from bringing suit. Should the fourth element materialize prior to the end of the two year period, the plaintiff will have a shorter time to file than the plaintiff who was fortunate enough to have simultaneous notice and the ability to allege all four elements.

The law as represented by Elliot and Windward runs contrary to the notions of justice. Clearly, this was not the intent of the Pennsylvania State Legislature in crafting the statute of limitations for a tortious interference claim. Therefore, this Court feels a need to clarify the law in an attempt to prevent further confusion and/or injustice. In accordance with the previously cited Pennsylvania State Court cases, this Court maintains that the statute of limitations

[1] Such a scenario is identical to the case at hand where CGB had notice along with three of the four elements necessary to file suit but was unable to allege the fourth, damages.

begins to run on a claim for tortious interference with a contract when the action accrues, that is, when each of the four elements of such a claim are present[2].

B. Elliot and Windward are Inapplicable to the Instant Case

Even if the law were as represented by Elliot and Windward, it would not apply to the case at hand. Elliot and Windward both present fact patterns under which a plaintiff received notice of the interfering acts and injury simultaneously. Elliot 161 F.Supp.2d at 423; Windward, 1996 WL at *3. The case at hand presents a different scenario. Here, the plaintiff received notice of the interfering acts nearly two months prior to actually incurring any damage. Thus, the Elliot and Windward plaintiffs were able to file a complaint immediately upon notice whereas CGB was unable to file a complaint until nearly two months after notice. This Court is in no way suggesting that Elliot and Windward were decided incorrectly, but rather, that the misstated law as recited in these cases is inapplicable to the case at hand.

Despite the diligent research of this Court, no cases could be found where notice of interfering acts are separated by any appreciable time from damages. Therefore, this case is one

[2] Notice is not mentioned here as it is not applicable to the facts at hand. In some cases, lack of notice can bar a statute of limitations from running. This is known as the "discovery rule." See Pocono International Raceway, Inc. v. Pocono Produce, Inc., 503 Pa. 80, 85 (1983).

of first impression. "When presented with a novel issue of [state] law, or where applicable state precedent is ambiguous, absent or incomplete, [a federal court] must determine or predict how the highest state court would rule." Rolick v. Collins Pine Co., 925 F.2d 661, 664 (3d Cir. 1991). Taking into consideration the language used by the Pennsylvania Supreme Court in Pocono, the holdings in Bednar, Pawlowski and Egan, as well as the notions of justice and practicality, this Court believes that the Pennsylvania Supreme Court would allow the plaintiff to continue its suit by finding that the statute of limitations does not begin to run upon notice but rather is triggered once an action has accrued, that is, until all four elements of a tortious interference claim are present.

III. APPLICATION OF THE CORRECT LAW

Application of the proper Pennsylvania law clearly shows that CGB filed their claim well within the statute of limitations. It wasn't until September 30, 1998, or thereafter, that Defendant Symphony allegedly hired three of CGB's employees. This hiring added the previously missing fourth element, damages, to CGB's claim. Therefore, the statute of limitations began to run on September 30, 1998. Applying the correct statutory two year time period, September 30, 2000 would have been the last day plaintiff could have brought suit. Because CGB brought suit on

September 28, 2000, two days prior to the September 30, 2000 deadline, CGB did not violate the statute of limitations in bringing their action. Accordingly, this Court reverses its previous decision.

AN APPROPRIATE ORDER WILL FOLLOW.

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Clarence C. Newcomer, S.J.

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O R D E R

AND NOW, this day of December, 2001, it is hereby ORDERED as follows:

(1) Plaintiff CGB Occupational Therapy, Inc.'s Motion for Reconsideration (Document #41) is GRANTED.

(2) The Court's previous Order (Document #39) is hereby VACATED.

(3) The Clerk shall REOPEN this case.

(4) Plaintiff shall have ten(10)days from the date of this Order to amend its complaint.

(5) A final pretrial conference shall take place on Monday, February 11, 2002 at 11:15 AM. All parties shall be prepared to start trial immediately following said conference.

(6) All pretrial motions are due by January 7, 2002. Responses shall be due on January 21, 2002.

(7) Pretrial memoranda and proposed jury instructions are due by February 6, 2002.

AND IT IS SO ORDERED.

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Clarence C. Newcomer, S.J.